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SULAIMAN HAMAT

v.

PP

B

COURT OF APPEAL, PUTRAJAYA

KN SEGARA JCA

ABDUL WAHAB PATAIL JCA

AZAHAR MOHAMED JCA

[CRIMINAL APPEAL NO: C-05-69-2010]

C

30 JANUARY 2012

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Conviction and sentence - Appeal against - Admissibility of evidence - Information leading to fact discovered - Information given by accused while in police custody - Evidence Act 1950, s. 27 - Application of - Whether exhibits disputed was related to discovery of facts contained in information - Various deficiencies in evidence - Whether there was evidence rendering conviction unsafe*

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EVIDENCE: *Admissibility - Information leading to fact discovered - Information given by accused while in police custody - Evidence Act 1950, s. 27 - Application of - Whether exhibits disputed related to discovery of facts contained in information - Various deficiencies in evidence - Whether there was evidence rendering conviction unsafe*

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The appellant was tried, convicted and sentenced under s. 302 of the Penal Code for the offence of murdering one Wong Geet Yin ('the deceased'). Aggrieved, the appellant appealed against the said conviction and sentence. Briefly, the facts showed that one Chew Fook Yeam ('Chew') had lodged a police report that his wife, the

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deceased, had gone missing. Subsequently, Chew received a telephone call from someone who claimed that the deceased was with him and had asked for cash amounting to RM10,000. Chew placed RM5,000 in RM100 denomination whereby the serial numbers of which had been recorded by the police at the place directed by the caller. A few days later, the police arrested the appellant, who had in his possession 30 pieces of the aforesaid RM100 currency notes. Subsequent to his arrest, the appellant gave the information recorded in various police reports leading and pertaining to the discovery of the body of the deceased. In the

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appeal herein, the appellant raised the issues that: (i) the application of s. 27 of the Evidence Act 1950 ('Act') on relevancy of facts, in particular admissions and confessions made by the appellant while in the police custody, where the learned judge had

accepted the reports *in toto* when the only admissible evidence were statements leading to the discovery and the rest ought to be discarded; and (ii) that there were various deficiencies in the evidence. A

Held (dismissing appeal; affirming conviction and sentence)
Per Abdul Wahab Patail JCA delivering the judgment of the court: B

(1) It is clear that the Legislature intends that s. 27 of the Act is applicable whether the information from a person who is accused of an offence and given while in custody, amounts to a confession or not. Section 27 therefore cannot not be dismissed as not artistically worded. The question whether it is unfair or not is no longer the issue. Hence, while it is right and proper that the courts must be cautious in its application, and the courts have been vigilant, it means the court must be cautious about the information and therefore examine its reliability. In the scope encompassed by s. 27, the fact discovered from the information so provided by itself proves the reliability of the information provided, and the true issue was whether the information was provided by the accused and while he was in custody, or not. (para 13) C
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(1a) The information provided by the appellant led to the discovery of the following facts (i) the place where the body of the deceased was thrown into and the body itself; (ii) the shop where the appellant sold the gold jewellery belonging to the deceased; (iii) the TV and DVD that the appellant bought, and the shirt, trousers and shoes he wore at the time of the alleged offence; and (iv) the public telephones he used and the placed he picked up the money paid. The impugned parts of the statements were clearly necessary part and parcel of the information given, linking the fact to the offence being investigated. (para 14) F
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(1b) The exhibits disputed did not lead to the discovery of any evidence, but related to the discovery of facts contained in the information, which was within the meaning and intent of s. 27 of the Act. It was erroneous to read s. 27 as pertaining to the discovery of evidence. Further, in the case of exh. P167, it was submitted that the words showed that it was not the information but the accused who caused the discovery. If a thing is already discovered, subsequent information by the accused is inadmissible, because it is no H
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- A longer a “discovery” (*PP v. Basri Salihin*). Consideration of the effect of admission of this inadmissible evidence necessarily requires an appreciation of what was in P167. The facts were discovered under the information provided and recorded in exh. P166. The effect of exh. P167 was
- B only that the appellant went with a police officer to the location to collect evidence samples. It did not in any way introduce any evidence that rendered the finding of the court and therefore the conviction to be unsafe. (paras 17 & 18)
- C (2) The cautioned statement was admitted subject to cross-examination. When the maker of it was not called, it became of no probative value. It was not a case of denial of an opportunity to cross-examine. As to the other deficiencies, the relevant witnesses were called and could have been
- D cross-examined thereof if the point was material. Where it was only raised on an appeal, it was an afterthought that could not be considered when the opportunity to examine it earlier was not exercised. (para 28)

E ***Bahasa Malaysia Translation Of Headnotes***

- E Perayu telah dibicarakan, disabitkan dan dihukum di bawah s. 302 Kanun Keseksaan bagi kesalahan membunuh seorang yang bernama Wong Geet Yin (‘si mati’). Tidak berpuas hati, perayu telah merayu terhadap sabitan dan hukuman tersebut. Secara
- F ringkasnya, fakta-fakta menunjukkan bahawa seorang yang bernama Chew Fook Yeam (‘Chew’) telah membuat laporan polis bahawa isterinya, si mati, telah hilang. Kemudian, Chew telah menerima panggilan telefon daripada seorang yang tidak dikenalnya, mendakwa bahawa si mati ada bersama-sama dengannya dan telah
- G meminta wang berjumlah RM10,000. Chew telah meletakkan RM5,000 dalam pecahan RM100 yang nombor sirinya telah direkodkan oleh pihak polis di tempat yang diarahkan oleh pemanggil. Beberapa hari kemudian, polis telah menangkap perayu, dan mendapati dalam milikannya 30 keping wang kertas RM100
- H yang dinyatakan. Selepas perayu ditangkap, perayu telah memberi maklumat yang direkodkan dalam beberapa laporan polis dan berkaitan membawa kepada penemuan mayat si mati. Dalam rayuan ini, perayu telah membangkitkan beberapa isu iaitu: (i)
- I pemakaian s. 27 Akta Keterangan 1950 (‘Akta’) atas kesesuaian fakta, khususnya, pengakuan dan kenyataan pengakuan bersalah yang dibuat oleh perayu semasa berada di bawah kawalan polis, di mana yang arif hakim telah menerima laporan secara keseluruhan

sedangkan satu-satunya yang sepatutnya diterima adalah keterangan kenyataan-kenyataan yang membawa kepada penemuan tersebut dan yang lain-lain harus dibuang; (ii) terdapat beberapa kekurangan dalam keterangan-keterangan yang dikemukakan. A

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman) B

Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

(1) Adalah jelas bahawa niat Badan Perundangan adalah agar s. 27 Akta boleh digunapakai sama ada maklumat daripada seseorang yang telah dituduh membuat kesalahan dan telah diberikan apabila bawah kawalan pihak polis, membentuk pengakuan atau tidak. Oleh itu, s. 27 tidak boleh tidak ditolak sebagai dinyatakan secara artistik. Persoalan sama ada ia adil atau tidak, tidak lagi menjadi isu. Oleh itu, walaupun adalah betul dan bertepatan bahawa mahkamah harus berhati-hati dalam pemakaiannya, dan mahkamah telah mengambil langkah-langkah yang selamat, ini bermakna mahkamah harus berhati-hati dengan maklumat dan memeriksa kebolehpercayaannya. Dalam skop yang terangkum dalam s. 27, fakta yang ditemui daripada maklumat yang diberi dengan sendirinya membuktikan kebolehpercayaan maklumat yang diberikan, dan isu sebenar adalah sama ada maklumat diberikan oleh tertuduh, dan sama ada ia dibuat semasa tertuduh berada bawah kawalan, atau tidak. C
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(1a) Maklumat yang diberikan oleh perayu membawa kepada penemuan fakta-fakta iaitu (a) tempat di mana mayat si mati telah dibuang dan mayatnya sekali; (b) kedai di mana perayu menjual barang kemas jenis emas kepunyaan si mati; (c) televisyen dan DVD yang dibeli oleh perayu, serta kemeja, seluar dan kasut yang dipakai oleh perayu pada masa kesalahan tersebut dilakukan; dan (d) telefon awam yang digunakan oleh perayu serta tempat di mana perayu telah mengambil wang yang dibayar. Bahagian-bahagian yang dipersoalkan dalam kenyataan-kenyataan adalah dengan jelas, bahagian penting maklumat yang diberi, mengaitkan fakta dengan kesalahan yang sedang disiasat. G
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(1b) Ekshibit-ekshibit yang dipertikaikan tidak membawa kepada penemuan apa-apa bukti, tetapi berhubung penemuan fakta yang terdapat dalam maklumat, iaitu dalam erti dan maksud s. 27 Akta. Adalah salah untuk membaca s. 27 seperti I

- A berkaitan dengan penemuan keterangan. Seterusnya, dalam kes eks. P167, diujahkan bahawa perkataan-perkataan menunjukkan ia bukanlah maklumat tetapi tertuduh yang menyebabkan penemuan itu. Jika sesuatu itu telah ditemui, maklumat seterusnya oleh tertuduh tidak boleh diterima,
- B kerana ia bukan lagi satu “penemuan” (*PP v. Basri Salihin*). Pertimbangan kesan penerimaan keterangan yang sepatutnya tidak boleh diterima memerlukan pertimbangan apa yang terkandung dalam P167. Fakta-fakta ditemui di bawah maklumat yang diberikan dan direkodkan dalam eks. P166.
- C Kesan eks. P167 hanyalah bahawa perayu dengan seorang pegawai polis telah pergi ke sesuatu tempat untuk mengumpul sampel keterangan. Ia tidak memperkenalkan apa-apa keterangan yang membuatkan dapatan mahkamah dan sabitan tidak selamat.
- D (2) Kenyataan beramaran yang diterima tertakluk kepada pemeriksaan balas. Apabila pembuatnya gagal dipanggil, ia tidak mempunyai nilai probatif. Ia bukanlah kes penafian peluang untuk memeriksa balas. Mengenai kekurangan-kekurangan yang lain, saksi-saksi yang relevan dipanggil dan diperiksa balas jika sesuatu isu itu adalah penting. Di mana ia hanya dibangkitkan semasa rayuan, ia dianggap sebagai fikiran semula yang tidak boleh dipertimbangkan apabila peluang untuk memeriksanya sebelum ini tidak dilaksanakan.
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- F **Case(s) referred to:**
Lam Chi Ming & Ors v. R [1991] 3 All ER 172 (*refd*)
PP v. Basri Salihin [1993] 1 CLJ 420 HC (*refd*)
R v. Sang [1979] 2 All ER 1222 (*refd*)
- G **Legislation referred to:**
Evidence Act 1950, s. 27

For the appellant - Ibrahim Kamaruddin (Muhd Hisham Abd Rahim with him); M/s Ibrahim Kamaruddin & Assocs
For the respondent - Nurul Huda Nur'aini Mohd; DPP
- H [Appeal from High Court Malaya, Kuantan; Criminal No: 45-7-2006]

Reported by Suhainah Wahiduddin
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JUDGMENT

A

Abdul Wahab Patail JCA:

[1] The appellant Sulaiman bin Hamat was tried, convicted and sentenced to the penalty provided by law under the following charge:

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Bahawa kamu, di antara tarikh 22/5/2006, jam lebih kurang 9.00 pagi hingga tarikh 29/5/2006, jam lebih kurang 7.00 malam, di kawasan belukar Kampung Anak Air, Peramu, di dalam Daerah Kuantan di dalam Negeri Pahang Darul Makmur, telah melakukan pembunuhan ke atas Wong Geet Yin, KP: 560912-065356, maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

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[2] He has appealed to this court against both conviction and sentence.

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[3] He had set out five grounds of appeal in his petition of appeal. For the purposes of submissions, the grounds were addressed in three groups, being grounds 1 and 2, grounds 3 and 4 and ground 5.

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[4] Before proceeding to the grounds of appeal, we set out a brief background of this case.

Brief Background

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[5] At 1.10am on 24 May 2006, one Chew Fook Yeem lodged in Kuantan a police report 8883/06 that his wife Wong Geek Yin did not arrive at his “kedai runcit” C&T Shop at 11am on 22 May 2006 as she was supposed to, all their relatives did not know where she was, and at about 3pm on 22 May 2006 he received a telephone call from someone he did not know who informed him that Wong Geek Yin was with him and asked for RM10,000.

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[6] On 25 May 2006 at about 9pm he placed RM5,000 in RM100 denomination the serial numbers of which had been recorded by the police, at the place directed by the caller.

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[7] On 29 May 2006, the police arrested the appellant in front of Restoran Tomyam, Jalan Pantai Sepat, Simpang Kampong Sungai Soi, Kuantan. He had in his possession 30 pieces of the aforesaid RM100 currency notes.

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- A [8] Subsequent to his arrest, the appellant gave the information recorded in various police reports leading and pertaining to the discovery of the body of the missing Wong Geek Yin.

Grounds 1 And 2

- B [9] Grounds 1 and 2 concern the application of s. 27 of the Evidence Act 1950 on relevancy of facts, in particular admissions and confessions. The appellant was, at all the material times pertaining to the application of s. 27, in the custody of the police.
- C [10] The evidence now sought to be impugned under s. 27 are contained in police reports produced as the following exhibits:
- (a) Exhibit P16 RR6:59 Police Report 29 May 2006 2310 hrs
 - D (b) Exhibit P17 RR6:60 Police Report 29 May 2006 2330 hrs
 - (c) Exhibit P81 RR6:102 30 May 2006 ~~0420 hrs~~ 1240 hrs
 - (d) Exhibit P82 RR6:103 30 May 2006 ~~0445 hrs~~ 1330 hrs
 - E (e) Exhibit P98 RR6:108 30 May 2006 1810 hrs
 - (f) Exhibit P99 RR6:109 30 May 2006 1820 hrs
 - (g) Exhibit P164 RR6:223 31 May 2006 1700 hrs
 - F (h) Exhibit P165 RR6:224 31 May 2006 1945 hrs
 - (i) Exhibit P166 RR6:225 2 June 2006 1055 hrs
 - (j) Exhibit P167 RR6:226 2 June 2006 1255 hrs
 - G (k) Exhibit P168 RR6:227 2 June 2006 1305 hrs
 - (l) Exhibit P170 RR6:229 2 June 2006 1815 hrs

- H [11] Before us, it was submitted the learned judge had accepted the reports above *in toto* when the only admissible evidence are statements leading to the discovery and the rest ought to be discarded. It was submitted that the crossed out words below are inadmissible and ought to be excluded:

(a) Exhibit P16:

- I Pada jam lebih kurang 1800 hrs 29/05/06 saya bersama D/Sjn 112021 dan L/Kpl/T 11291 telah buat soal siasat di bilik UTC Jalan Lim Hoe Lek Kuantan keatas suspek nama Sulaiman bin

Hamat, Kpt: 7106141 bersangkut Ktn. Rpt: 8883/06 dan sebelum itu saya telah bacakan rakaman percakapan beramaran di bawah sek. 113 KPJ yang berbunyi:

A

Adalah menjadi kewajipan saya beri amaran kepada kamu bahawa kamu tidak diwajibkan berkata-kata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan sebagai jawapan sesuatu soalan atau tidak, boleh dijadikan sebagai keterangan.

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Setelah suspek memahami lalu suspek berkata, “Encik, perempuan Cina yang saya culik tempoh hari telah saya tumbuk dan ikat tangannya lalu saya buang tubuh mangsa di kawasan belukar, Kampung Anak Air, Peramu Kuantan dan saya boleh tunjukkan”.

C

Saya jadikan ini sebagai maklumat. Inilah pengaduan saya.

(b) Exhibit P17:

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Pada jam lebih kurang 1900 hrs 29/05/06 saya bersama D/Sjn 112021, L/Kpl 101652, 135775, 143331, 143136, 145529, 146016 dan L/Kpl/T 11291 dengan diiringi suspek nama Sulaiman Bin Hamat, Kpt: 710614-035205 telah sampai di kawasan belukar Kampung Anak Air Peramu, Kuantan dan suspek telah tunjukkan satu rangka manusia dan berkata itulah perempuan Cina yang saya katakan tadi.

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Saya bersama anggota telah menjumpai satu rangka manusia di dalam kawasan belukar tersebut.

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Inilah pengaduan saya.

(c) Exhibit P81:

Pada jam lebih kurang 1245 hrs 30/5/2006 saya bersama Sjn 59577 telah jalankan soal siasat terhadap OYDS nama Sulaiman bin Hamat KPT: 710614-03-5205 bersangkut Kuantan Rpt: 8883/06 di Pejabat URJ, IPD Kuantan, Pahang. Sebelum itu saya telah bacakan percakapan beramaran menurut sek. 113 Kanun Prosedur Jenayah ke atas OYDS yang berbunyi seperti berikut:

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Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan sama ada sebagai jawapan kepada suatu soalan atau tidak, boleh diberikan sebagai keterangan.

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- A Setelah OYDS faham lalu OYDS beritahu, “Barang-barang kemas yang dipakai oleh perempuan Cina ~~yang saya culik dan pukul tempoh hari telah saya ambil dan dijual~~an dikedai Emas Sin Hin Jln Bukit Ubi, saya boleh tunjukkan tempatnya.” Saya seterusnya jadikan pernyataan ini sebagai maklumat. Inilah pengaduan saya.
- B

(d) Exhibit P98:

- C Pada jam lebih kurang 1700 hrs 30/5/2006 saya bersama Kpl 59574, dan Konst 148235 telah jalankan soal siasat terhadap OYDS nama Sulaiman Bin Hamat, Kpt: 710614-03-5205 bersangkut Kuantan Rpt: 8883/06 di Pejabat URJ, IPD Kuantan, Pahang. Sebelum itu saya telah bacakan percakapan beramaran menurut sek. 113 Kanun Prosedur Jenayah ke atas OYDS yang berbunyi seperti berikut:
- D Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa, kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada sebagai jawapan kepada suatu soalan atau tidak, boleh diberikan sebagai keterangan.
- E Setelah OYDS faham lalu OYDS beritahu, “~~Daripada hasil wang yang saya perolehi dari suami mangsa yang saya culik dan pukul telah saya beli satu TV dan satu DVD serta baju, seluar dan kasut yang saya pakai semasa kejadian tersebut juga berada di bilik sewa saya di alamat Ting. atas rumah No. E-505 Jln Wong Ah Jang. Saya boleh tunjukkan~~”. Saya jadikan ini sebagai maklumat. Inilah laporan saya.
- F

(e) Exhibit P99:

- G Bertindak di atas maklumat, pada jam lebih kurang 1730 hrs 30/05/2006 saya bersama Kpl: 59574, 107955 dan Konst 143976, 148235 dengan diiringi oleh OYDS nama Sulaiman Bin Hamat, Kpt No: 710614-03-5205 telah sampai di rumah No. E 505, Jln. Wong Ah Jang, 25100 Kuantan Pahang dan OYDS telah tunjukkan saya satu TV 14 inci jenis “TOBISHI”, satu DVD jenis “MATSUDA”, yang berada
- H didalam bilik sewanya iaitu tingkat atas dan berkata “~~Encik, itulah TV dan DVD yang saya maksudkan. Selepas itu OYDS telah tunjukkan kepada saya satu seluar, satu baju dan sepasang kasut yang juga berada di dalam bilik tersebut dan berkata inilah pakaian yang saya pakai semasa kejadian~~”.
- I Saya telah membuat pemeriksaan dapati sehelai baju jenis MANDILU WEAR warna kelabu, seluar jenis jean Biru jenis GIVANO dan sepasang kasut jenis POWER. Kesemua

barangan tersebut saya rampas untuk tindakan lanjut, dan sesalinan searchlist telah diserahkan kepada OYDS. Inilah laporan saya.

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(f) Exhibit P164:

Pada jam lebih kurang 1610 hrs 31/05/2006 saya bersama Konst. 143080 telah buat pertanyaan terhadap OYDS nama Sulaiman bin Hamat, KPT: 710614-03-5205 berkait Kuantan Rpt: 8883/06 di Pejabat URJ, IPD Kuantan, Pahang. Mengenal tempat-tempat Talipon Awam, Tempat mengambil wang dan tempat-tempat yang terlibat dalam kes tersebut. Sebelum pada itu saya telah bacakan percakapan beramaraman menurut sek. 113 Kanun Prosedur Jenayah ke atas OYDS yang berbunyi seperti berikut:

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Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa, kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada sebagai jawapan kepada sesuatu soalan atau tidak. Boleh diberikan sebagai keterangan.

D

Selepas dibaca OYDS faham lalu OYDS beritahu kepada saya "Saya boleh tunjukkan di mana ~~tempat-tempat talipon awam yang saya gunakan dan tempat-tempat pengambilan wang dari suami-simati~~".

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Kemudian saya jadikan maklumat ini sebagai satu report.

Inilah laporan saya.

F

(g) Exhibit P165:

Bertindak di atas maklumat sebagaimana KTN RPT:9335/06 antara jam lebih kurang 1630 hrs hingga 1845 hrs 31/05/2006 saya bersama KPL.84029, D/L/KPL: Mohd Noor (Juru gambar), L/KPL.123174, dan Konst. 143080 berkait Kuantan Rpt: 8883/06. Dengan dipandu arah oleh OYDS nama Sulaiman bin Hamat KPT: 710614-03-5205. Telah menunjukkan kepada saya ~~tempat-tempat kejadian dan pondok-pondok talipon awam serta tempat pengambilan wang dari suami-si mati. Di antara tempat-tempatnya ialah:~~

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1) ~~Tempat kereta mangsa ditinggalkan: Lot. 19. Kg Peramu, Kuantan.~~

2) ~~Tempat jual emas: Kedai Emas Sin Hin, Jalan Bukit Ubi, Kuantan.~~

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3) ~~Tempat OYDS tumpang kereta mangsa: E-505, Jln Wong Ah Jang, Kuantan, Pahang.~~

- A 4) ~~Talipon Awam, hadapan kedai Perabut Seng Heng, Jln Wong Ah Jang, Kuantan.~~
- 5) ~~Talipon Awam, Jalan Tun Ismail 1, Kuantan.~~
- B 6) ~~Tempat ambil wang Kuantan Plaza, Jln. Tun Ismail, Kuantan.~~
- 7) ~~Talipon Awam, Jalan Bukit Ubi Kuantan.~~
- 8) ~~Kedai M/Sikal di kemunting, Kuantan.~~
- C 9) ~~Talipon Awam. No 46 Jln. Tanah Puteh Baru, Kuantan.~~
- 10) ~~Tempat ambil wang di tiang talipon, Jalan Industri Tanah Puteh Baru, Kuantan.~~
- 11) ~~Talipon Awam, Hadapan rumah no 692, Lengkok Kanan 22, Tanah Puteh Baru, Kuantan.~~
- D 12) ~~Talipon Awam dalam kawasan Sek. Men. Keb. Tg. Lumpur, Kuantan.~~
- 13) ~~Tempat OYDS menumbuk mangsa. Belakang Lips Boom Boom, Jln. Besar, Kuantan.~~
- E

Semua tempat telah diambil gambar oleh D/L/KPL: Mohd Noor. Dalam pemeriksaan di tempat-tempat tersebut tiada sebarang tangkapan dan rampasan dibuat.

F Inilah laporan saya.

(h) Exhibit P166:

- G Pada jam lebih kurang 1050 hrs 2/6/2006 saya bersama L/Kpl. 123174 buat soalsiasat terhadap OYDS nama SULAIMAN BIN HAMAT KPT: 710614-03-5205 di Pejabat URJ, IPD Kuantan, Pahang. Sebelum itu saya telah bacakan rakaman percakapan beramaran ke atas OYDS yang berbunyi 'Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada sebagai jawapan kepada suatu soalan atau tidak, boleh diberikan sebagai keterangan'. Setelah OYDS faham lalu OYDS beritahu saya
- H "~~saya tumpang kereta nyonya dari rumah di Wong Ah Jang ke tempat kerja, sampai kastam saya tumbuk ditepi kepala dan nyonya pengsan, saya turun dan cari kayu dan pukul 3, 4 kali dikepala dan buang disitu, nyonya saya letak ditempat duduk belakang. Saya bawa kereta pergi ke kawasan hutan dan heret nyonya di kawasan hutan saya ikat tangan nyonya dengan tali dan saya ambil barang kemas. Saya keluar semula dan beli~~
- I

~~minyak petrol 2 ringgit isi dalam botol mineral besar di Petronas Peramu. Saya pergi balik ke hutan dan simbah nyonya dengan petrol dan saya terus bakar dan botol saya buang disitu dan terus beredar²². Maklumat ini saya jadi laporan Polis bersangkut Ktn. Rpt. 8883/06. Inilah laporan saya.~~

A

(i) Exhibit P167:

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~~Pada jam lebih kurang 1120 hrs 2/6/06 bertindak diatas maklumat bersangkut Ktn Rpt. 9434/06 saya bersama D/Kpl. Yusof, Kpl. 99335, L/Kpl. 118312 dan L/Kpl. 123174 dengan dipandu arah oleh OYDS nama SULAIMAN BIN HAMAT KTP: 710614-03-5205 telah membawa saya ke tempat kejadian di kawasan hutan Kg. Anak Air, Peramu, Kuantan. Sampai disana saya telah mengarahkan D/Kpl. Yusof untuk mengambil kesan terbakar dipokok serta mengambil sample tanah di tempat mayat ditemui. Sebatang dahan pokok dan sample tanah saya bawa balik ke Balai Polis Kuantan bersangkut Ktn. Rpt. 8883/06. Inilah laporan saya.~~

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[12] Section 27 provides as to how much of information received from an accused may be proved:

- (1) When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

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[13] In an appeal from Hong Kong, the Privy Council in *Lam Chi Ming & Ors v. R* [1991] 3 All ER 172 established that s. 27 is not derived from any exception in the common law of England. The common law took the approach that the confession is inadmissible not because it is unreliable, since its reliability is established by what is found, but because to admit it would be unfair (see *R v. Sang* [1979] 2 All ER 1222, 1245). But in the jurisdictions that adopted s. 27, their legislatures had made a choice. In the Evidence Act 1950, the legislature had made a policy decision. In the plain language of s. 27, it is clear that the legislature intends that s. 27 is applicable whether the information from a person who is accused of an offence and given while in custody, amounts to a confession or not. Section 27, therefore cannot be dismissed as not artistically worded. The question whether it is unfair or not is no longer the issue. Hence, while it is right and proper that the courts must be cautious in its

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- A application, and the courts have been vigilant, it means the court must be cautious about the information and therefore examine its reliability. In the scope encompassed by s. 27, the fact discovered from the information so provided by itself proves the reliability of the information provided, and the true issue is whether the
- B information was provided by the accused and while he is in custody, or not.

[14] The information provided by the appellant in this case led to the discovery of the following facts:

- C (a) the place where the body of the deceased was thrown into and the body itself (exh. P16 & exh. P17),
- (b) the shop where the appellant sold the gold “barang kemas” belonging to the deceased to (exh. P81 & exh. P82),
- D (c) the TV & DVD that the appellant bought, and the shirt, trousers and shoes he wore at the time of the alleged offence (exh. P98 & exh. P99),
- E (d) the public telephones he used and the places he picked up the money paid (exh. P164 & exh. P165).

- [15] The impugned parts of the statements were clearly necessary part and parcel of the information given, linking the fact to the offence being investigated. We observe that except in the case of
- F exh. P165, it was not submitted before us that the information was not provided by the appellant.

- [16] In the case of exh. P165, it was suggested in submissions that maybe the words were not from the appellant. Examination
- G of the record of evidence does not show that the accusation that the appellant did not provide this information was not put to P/ASP Shafee bin Samad I/11200. A suggestion in submission founded upon a mere speculation cannot lead anywhere. It can only be dismissed.

- H [17] We examined exh. P166. It did not lead to the discovery of any evidence, but the information recorded in exh. P166 clearly relates to the discovery of the facts contained in the information. This is within the meaning and intent of s. 27 because it refers to
- I discovery of the fact, not discovery of the evidence. It is erroneous to read s. 27 as pertaining to the discovery of evidence.

[18] In the case of exh. P167, it was submitted that the words showed that it was not the information but the accused who caused the discovery. In support of the submission, counsel relied upon *PP v. Basri Salihin* [1993] 1 CLJ 420; [1994] 2 MLJ 476, that if a thing is already discovered, subsequent information by the accused is inadmissible, because it is no longer a “discovery”. We accept this submission since the fact that it is the site where the body of the deceased was thrown by the appellant was already discovered. Consideration of the effect of admission of this inadmissible evidence necessarily requires an appreciation of what is in P167. We observe the facts were discovered under the information provided and recorded in exh. P166. The effect of exh. P167 is only that the appellant went with P/ASP Shafee bin Abd. Samad I/11200 to the location to collect evidence samples. It does not in any way introduce any evidence that renders the finding of the court and therefore the conviction to be unsafe.

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[19] It was submitted that:

- (a) Exhibit P81 and exh. P107 are actually the same but the changes to the time 0420 hrs was to 1240 hours and 1250 hrs respectively.
- (b) Exhibit P82 and the document D106 appear the same except while in both instances the times the report was made had been changed from 0445 hours to 1330 hours, the time they went to Kedai Emas Sin Hin was 1245 hrs in exh. P83 while it was altered to 1315 hours in D106.

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[20] To our minds since it is not shown how in this instance a time difference of ten minutes is material, the difference is irrelevant. As between exh. P82 and D106, the document produced is exh. P82, and the sole change to 0445 hrs to 1330 hrs is plain and visible to see, while D106 is less obvious.

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[21] Borang bongkar exh. P18 is in respect of the search at Kedai Emas Sin Hin. It is clear it was carried out at 1245 hrs on 30 May 2006. That being the case, exh. P82, that at 1245 hrs they went to Kedai Emas Sin Hin and made the report in exh. P82 is not altogether contradictory.

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[22] Counsel referred to the station diary at RR6:246-262 of the record of appeal and pointed out serial 9320 at RR6:250 that the appellant was taken out of the station at 1605 hrs. We observe

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A RR6:250 is p. 115 of the station diary but pp. 112, 113 and 114 are not in the record of appeal. The crucial time 1200 hrs to 1330 hrs were not covered. There is no basis to consider the matter raised.

B [23] We conclude that grounds 1 and 2 must fail.

Grounds 3 & 4

[24] In this part, counsel referred to various deficiencies in the evidence:

C (a) Exhibit P30, a “surat pengakuan” used by Kedai Emas Sin Hin and dated 22 May 2006. The point raised is whether this can be admitted as it contained no name and address, and only a photocopy of the identity card of the appellant (exh. P32) was attached to it.

D (b) Search list exh. P100 with the complaint carried no date and time.

E (c) Exhibit P44, a Kuantan police report dated 29 May 2006 that the money found on the appellant was RM3158, but the total sum shown by the currency listed at “Lampiran A” attached to it showed a total of RM3008.

F [25] We noted there was oral evidence to explain that RM150 in RM10 denominations were not recorded. More to the point is that the material part of the evidence was that the 30 pieces of currency in RM100 denominations corresponded with the RM100 currency notes in the ransom payment recorded by the police.

G [26] It was also submitted that:

(a) Exhibit P58 is a record of investigation by L/KPL 143331 Nik Fazree bin Nik Mustafa. It was not signed.

H (b) Exhibit P177 is a cautioned statement by one Masliana bte Harun KP: 821204-01-5350, produced through SP27 (RR4:731, 735). It was argued the appellant had no opportunity to cross examine her.

I (c) Exhibit P80, a piece of wood showed no signs it was used by the appellant.

[27] It was submitted that in the light of the above, the learned judge erred in finding that the defence was only of denial. A

[28] We observe that the cautioned statement was admitted subject to cross-examination. When the maker of it was not called, it became of no probative value. It is not a case of denial of an opportunity to cross-examine. As to the other deficiencies, the relevant witnesses were called and could have been cross-examined thereon if the point was material. Where it is only raised on an appeal, it is an afterthought that cannot be considered when the opportunity to examine it earlier was not exercised. B C

[29] We therefore dismissed grounds 3 and 4.

Ground 5

[30] It was submitted, relying on the above, the elements of murder were not proved. Ground 5, as submitted upon briefly is not a ground of appeal in the strict sense, only is a conclusion from the earlier submissions. It is not necessary to repeat the foregoing. For the reasons given above, we reject Ground 5 as submitted. D E

Conclusion

[31] We therefore dismissed the appeal and affirmed the conviction and sentence passed by the High Court. F

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